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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 2nd February 2009

No. 952—li/1(B)-72/2009-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th December 2008 in I. D. Case No. 230 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Orissa University of Agriculture & Technology, Bhubaneswar and its workman Shri Brahmananda Pradhan was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 230 OF 1995

Dated the 20th December 2008

#### *Present :*

Shri M. R. Tripathy,  
Presiding Officer, Labour Court,  
Bhubaneswar.

#### *Between :*

The Management of Orissa University of Agriculture and Technology,  
Bhubaneswar.      .. First Party—Management

And

Its workman      .. Second Party—Workman  
Shri Brahmananda Pradhan.

*Appearances :*

Shri J. K. Mohapatra, Advocate	.. For the First Party— Management
Shri B. Pradhan,	.. The Second Party— Workman himself.

**AWARD**

The Government of Orissa in exercise of powers conferred upon by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 referred the present dispute to this Court for adjudication vide Order No. 10364, dated the 14th August 1995 of the Labour and Employment Department, Bhubaneswar.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Brahmananda Pradhan, Watchman by the Registrar, Orissa University of Agriculture and Technology, Bhubaneswar with effect from the 28th August 1992 is legal and/or justified ? If not, what relief Shri Pradhan is entitled to ?”.

3. The case of the workman may be briefly stated as follows :

The workman was appointed as Watchman on the 15th July 1991 in the Directorate of Physical Plant under the control of the Registrar, Orissa University of Agriculture and Technology, Bhubaneswar on a consolidated pay of Rs. 750 per month. While he was performing his duty sincerely, suddenly he was terminated from services with effect from the 28th August 1992. There was no allegation against him and no intimation was given to him before he was retrenched. He had performed his duty for more than 240 days during the preceding 12 months from the date of his retrenchment.

4. The management in the written statement has submitted that the Orissa University of Agriculture and Technology, Bhubaneswar is a statutory body and for appointment in a particular post in the management one has to face the recruitment procedure. According to rules, whenever a vacancy arises applications are invited by publication of advertisement in the newspaper as well as by requesting the Employment Exchange to sponsor the names of eligible candidates. Thereafter a selection committee is formed and after interview the post of Class IV cadre are filled up. In order to implement different programmes of the University sometimes daily labourers are employed and after completion of the work, they are dis-engaged. In the year 1991 there was a necessity for construction of a cow-shed in the Live Stock Farm of the management. In order to watch the building materials the workman was appointed as Watchman from the 5th July 1991 to 28th August 1992. There was no need to further engage him because the work was completed on the 28th August 1992. During the month of July, 1991 the workman was engaged for 15 days, in August, 1991 he was engaged for 27 days etc. He was never engaged continuously from the month of July, 1991 to August, 1992. The wages which he was due to get was paid to him during the period of engagement, as such, no amount is outstanding against the management. He was a casual

labourer and was not appointed against any permanent vacancy. After completion of the construction of the cow-shed there was no necessity to engage him and so with effect from the 28th August 1992 he was disengaged. He had not completed 240 days work during the preceding 12 months from the date on which he was terminated and so far all the aforesaid reasons he is not entitled to get any relief in this case.

5. On the basis of the above materials, the following issues were framed.

### ISSUES

- (i) Whether the termination of services of Shri Brahmananda Pradhan, Watchman by the Registrar, Orissa University of Agriculture and Technology, Bhubaneswar with effect from the 28th August 1992 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?

6. In support of his cases the workman examined himself as a witness. The authorised representative of the management failed a Memo on the 6th December 2007 expressing the unwillingness of the management to examine any witness in this case. In this case the workman submitted his oral argument on the 5th December 2008. The management has filed a written argument.

### FINDINGS

7. *Issue Nos. (i) and (ii)* — The workman in his deposition has stated he was working as Watchman under the Directorate of Physical Plant of the management with effect from the 15th July 1991 as a N.M.R. on daily wages basis. He worked as such till the 28th August 1992. Thereafter the management refused further employment to him. He was working continuously but the management did not give a notice to him prior to retrenchment. Also notice pay in lieu of notice or compensation was not paid to him. During cross-examination he has admitted that he had not received any appointment letter from the management. There also no interview or any advertisement when he was engaged as a Watchman. In the written statement at Para.11 the management has stated as follows :

“ The workman was engaged under a scheme as a seasonal worker for watch and word for construction of a particular cow-shed. Completion of 240 days of work is not material for reinstatement and also as per record the workman has not worked continuously for a period of 240 days in a calendar year.”

In Para. 7 of the written statement the management has stated as follows :

“ In this process he was engaged from the 5th July 1991 to the 28th August 1992 as a casual seasonal worker. There was no need to engage him further more as because the construction of cow-shed was completed within the 28th August 1992. The first-party is not out of place to mention here that during the month of July, 1991 the workman was engaged for 15 days, in August, 1992 he was engaged for 27 days, likely he was engaged in August, 1992 for 22 days. The detail statement will be filed at the time of hearing.”

But actually no detail statement was filed at the time of hearing by the management. The management has not stated a word in the written argument about the total days which the workman worked during the preceding 12 months from the date on which he was terminated. As stated earlier, the management has also not examined any witness in this case. So from the facts stated in Para. 7 and 11 of the written statement it can be construed that the workman had worked for more than 240 days in the preceding year, of course not continuously. According to Section 25-B (2) (a) (ii) of the Industrial Disputes Act, 1947 where a workman is not in continuous service for a period of one year, he shall be deemed to be in continuous service for one year if during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer (management) for not less than 240 days. In the present case it is admitted by the management that the workman had worked from the 5th July 1991 to 28th August 1992 intermittently. The management in the written statement has nowhere specifically taken the plea that during the preceding 12 months from the 28th August 1992 the workman had not worked for total period of 240 days. As stated by me earlier, according to Section 25-B of the Industrial Disputes Act, 1947 continuous service for 240 days is not necessary. Once it is found that in the preceding 12 months he had worked for more than 240 days a right accrues in his favour to claim compensation as provided under Section 25-F of the Industrial Disputes Act, 1947.

8. The facts and circumstances of the present case is identical to the facts and circumstances of the case reported in 78 (1994) CLT 639 in the case of Chairman-cum-Managing Director, Orissa Road Transport Company Limited Vrs. Ramesh Chandra Gouda and another. In the said case the workman was also working as a Casual Watcher on daily wages basis from the 14th February 1986 to 14th January 1987. Thereafter he was no longer employed. It was held that, even a casual worker employed on daily wages basis, if he has worked for more than 240 days prior to termination of his service he can not be terminated without observing the provisions of Section 25-F of the Industrial Disputes Act, 1947. In another decision reported in 69 (1990) CLT 357 in the case of Shyam Sundar Rout Vrs. Orissa State Road Transport Corporation and others, it was held that the payment of retrenchment benefit is a mandatory, pre-condition and non-compliance thereof renders the order of retrenchment void *ab initio*. Admittedly in the present case retrenchment benefit as provided under Section 25-F of the Industrial Disputes Act, 1947 was not given to the workman at the time of termination of his service and therefore, in view of the above said settled position of law, I would say that the action of retrenchment is void *ab initio*. Thus the workman is entitled to claim his reinstatement in service.

9. It is well settled that a workman who is retrenched illegally i.e. without compliance of Section 25-F of the Industrial Disputes Act, 1947 is entitled to get back wages but for that purpose he must prove that he was not gainfully employed anywhere else after he was retrenched. In the present case the workman himself in the cross-examination has admitted that after he was retrenched, he was doing cultivation as well as tuition of children in his village. So it can not be said that he was sitting idle after he was retrenched. Therefore, I am of the view that he is not entitled to get any amount towards back wages.

10. It is stated by the management that the service of the workman was not required after completion of the cow-shed. If the management is not in a position to absorb the workman in the same post or in any other identical post, in that case the management must pay some amount as compensation to the workman because he was retrenched without notice and retrenchment benefit. Accordingly both the issues are answered.

11. Hence Ordered :

The management is directed to reinstate the workman in service without any back wages within 30 days from the date of publication of the Award in the official Gazettee. If the management decides not to appoint the workman in the same post or in any identical post due to non-availability of work, then in that case the management shall pay a lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only within 30 days from the date of publication of the Award in the official Gazette, in default, the management will be liable to pay interest at the rate of 6% (six per cent) per annum from the date on which it becomes due till the date of actual payment.

Accordingly the reference is answered.

Dictated and corrected by me.

M. R. TRIPATHY  
20-12-2008  
Presiding Officer  
Labour Court, Bhubaneswar

M. R. TRIPATHY  
20-12-2008  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor  
K. C. BASKE  
Under-Secretary to Government